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SIMON ABIEANGA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SIMON ABIEANGA,

Defendant.

Case No. 1:22-cr-00030 ADA-BAM-2

**STIPULATED MOTION AND ORDER TO
REDUCE SENTENCE PURSUANT TO 18
U.S.C. § 3582(c)(2)**

RETROACTIVE CRIMINAL HISTORY
REDUCTION CASE

Judge: Unassigned

Defendant, SIMON ABIEANGA, by and through his attorney, Assistant Federal Defender Peggy Sasso, and plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Assistant U.S. Attorney Shelley D. Weger, hereby stipulate as follows:

1. Pursuant to 18 U.S.C. § 3582(c)(2), this Court may reduce the term of imprisonment in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), after taking into account the policy statements set forth in USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable;

2. The United States Sentencing Commission recently amended the Sentencing Guidelines to include what now appears in USSG § 4C1.1 (“zero-point provision”). *See* Amendment 821, Part B, Subpart 1. The zero-point provision provides a 2-offense-level

1 reduction for certain offenders who present zero criminal history points and satisfy the criteria
 2 listed in USSG § 4C1.1(a). The United States Sentencing Commission made the zero-point
 3 provision retroactive beginning February 1, 2024. *See* USSG § 1B1.10(e)(2) (Nov. 1, 2023); 88
 4 Fed. Reg. 60534;

5 3. On March 20, 2023, this Court sentenced Mr. Abieanga to a term of 41 months;

6 4. Mr. Abieanga's total offense level was 20, his criminal history category was I
 7 (based on him having zero criminal history points), and the resulting guideline range was 33 to
 8 41 months;

9 5. The sentencing range applicable to Mr. Abieanga was subsequently lowered by
 10 the zero-point provision;

11 6. Mr. Abieanga is eligible for a reduction in sentence, which reduces his total
 12 offense level by 2 from 20 to 18, and his amended advisory guideline range is reduced to 27 to
 13 33 months;

14 7. Accordingly, the parties request the Court enter the order lodged herewith
 15 reducing Mr. Abieanga's term of imprisonment to 33 months for Count 1 of the superseding
 16 indictment, effective 10 days from the date of the amended judgment. If the amount of time
 17 served as of the effective date of the Court's Order exceeds 33 months, the sentence is instead
 18 reduced to a sentence of time-served effective 10 days from the date of the amended judgment.¹

19 8. United States' statement regarding its stipulation²: Defendant was convicted of
 20 one count of Conspiracy to Commit Wire Fraud in violation of 18 U.S.C. § 1349. The United
 21 States enters into this stipulation after reviewing the Presentence Investigation Report ("PSR");
 22 government's objections to the PSR and sentencing memorandum, ECF No. 85; defendant's
 23 sentencing memorandum, ECF No. 87; Statement of Reasons ("SOR"); Judgment, ECF No. 101;
 24 the factual basis to the plea agreement, ECF No. 61 at 12; defendant's Bureau of Prisons
 25 ("BOP") disciplinary history, and after consultation with one of the prosecuting Assistant United
 26 States Attorneys and sending notices of the defendant's request for a sentence reduction to the

27 ¹ This 10-day period is requested by the Bureau of Prisons to perform its statutory duties and
 28 release planning.

² This statement is provided by the United States and is not part of the parties' stipulation.

1 individual victims. To date, the government has not received any responses or statements from
2 the victims.

3 According to the factual basis attached to the plea agreement, this conviction stems from
4 a scheme to defraud the California Employment Development Center (“EDD”) and other
5 individual victims, by submitting false claims for benefits. ECF No. 61 at 12. The benefits were
6 placed on debit cards that were sent to addresses provided in the false claims. After fraudulently
7 obtaining the funds, defendant used the monies for his own benefit and the benefit of others who
8 were not entitled to the funds. The defendant’s conduct caused actual losses of over \$105,000 to
9 California EDD and other victims. In addition, defendant and his co-conspirators also created
10 numerous online advertisements for the sale of non-existent cats, dogs, horses, automobiles, and
11 recreational vehicles. Individuals who attempted to purchase these fake goods were instructed to
12 wire funds to defendant and his co-conspirators. Defendant’s conduct caused an intended loss to
13 victims exceeding \$550,001. ECF No. 61 at 12.

14 At sentencing both parties recommended a sentence at the high end of the guideline range
15 as calculated in the plea agreement. ECF No. 85, 87. The Court followed the parties’
16 recommendation and imposed a sentence of 41 months in prison.

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1 BOP records indicate that as of February 28, 2024, the defendant has no reported
2 sustained incidents during his time in BOP custody. Defendant is currently located at Lompoc
3 USP with a projected release date of September 29, 2024. *See* Bureau of Prisons Inmate Locator
4 available at <https://www.bop.gov/inmateloc/> (last visited Feb. 27, 2024).

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6 Respectfully submitted,

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8 Dated: February 28, 2024

9 PHILLIP A. TALBERT
United States Attorney

Dated: February 28, 2024

HEATHER E. WILLIAMS
Federal Defender

10
11 /s/ Shelley D. Weger
SHELLEY D. WEGER
Assistant U.S. Attorney

/s/ Peggy Sasso
PEGGY SASSO
Assistant Federal Defender

12
13 Attorney for Plaintiff
UNITED STATES OF AMERICA

Attorneys for Defendant
SIMON ABIEANGA

ORDER

This matter came before the Court on the stipulated motion of the parties for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2).

The parties agree, and the Court finds, that Mr. Abieanga is entitled to the benefit of Amendment 821, Part B, Subpart 1, the new zero-point provision, which reduces the total offense level from 20 to 18, resulting in an amended guideline range of 27 to 33 months.

IT IS HEREBY ORDERED that, pursuant to USSG § 1B1.10(b), the term of imprisonment imposed in 2023 is reduced to a term of 33 months for Count 1 of the superseding indictment, effective 10 days from the date of the amended judgment. If the amount of time served as of the effective date of the Court's Order exceeds 33 months, the sentence is instead reduced to a sentence of time-served effective 10 days from the date of the amended judgment.

IT IS FURTHER ORDERED that all the terms and provisions of the original judgment remain in effect. The clerk shall forthwith prepare an amended judgment reflecting the above reduction in sentence and shall serve certified copies of the amended judgment on the United States Bureau of Prisons and the United States Probation Office.

Unless otherwise ordered, Mr. Abieanga shall report to the United States Probation Office within seventy-two hours after his release.

DATED: March 8, 2024.


CHIEF UNITED STATES DISTRICT JUDGE